

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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WILDADE NELSON,  
Plaintiff

V.

JOANNE MCGANN  
"In all her capacities"  
and  
COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF HEALTH AND HUMAN  
SERVICES, DEPARTMENT OF  
MENTAL RETARDATION,  
Defendants

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No. 05-11269NG

**DEFENDANT JOANNE MCGANN'S MOTION TO DISMISS**

Pursuant to Fed.R.Civ.P. 12(b)(6), the Department of Mental Retardation moves to dismiss various claims for failure to state a claim upon which relief can be granted for the following reasons:

1. Since the Plaintiff failed to exhaust all the requisite administrative remedies, her claims pursuant to 42 U.S.C. 2000e are barred as a matter of law,
2. Sovereign immunity and the language of 42 U.S.C. §1983 bar claims of damages against McGann in her official capacity,
3. As a state employee acting within the scope of her employment, McGann is immune from liability for negligence, and
4. The exclusivity provision of the Workers' Compensation Act bars the Plaintiff's claim for intentional infliction of emotional distress.

RESPECTFULLY SUBMITTED,  
JOANNE MCGANN

By her attorneys,

THOMAS F. REILLY  
ATTORNEY GENERAL

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/s/

Ernest L. Sarason, Jr., BBO NO: 441980  
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Dated: January 6, 2006

**CERTIFICATE OF SERVICE**

I certify that on this 6th day of January 2006 I served the above document on the plaintiff, Wildade Nelson, via regular mail postage prepaid to her address of record, 22 Kessler Farm Dr., Nashua, NH 03063

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Ernest L. Sarason, Jr.